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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,626	03/18/2002	Peter Wilhelm Koenig	3960.010	7229

7590

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EXAMINER

HOOLAHAN, AMANDA J

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/088,626

Applicant(s)

KOENIG ET AL.

Examiner

Amanda J Hoolahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-22 are finally rejected under 35 U.S.C. 102(b) as being unpatentable by USPN 5,058,525 to Rilling.

Rilling discloses a supply meter (20) for liquid or gaseous medium or electric current, with a display device (28) for displaying the amount of the medium which has passed through the supply meter, which displays with a cumulative meter reading the entire amount consumed to date and makes possible the production of the verification code, thereby characterized, that the verification code display device is mechanically linked with the drive means (38) for the consumed-amount display device (30), and that the translation relationship between the drive means and the verification code display device is freely selectable; the verification code provided by the verification code display device is a product of the position of the consumed-amount display device, the setting of the verification code display device when the consumed-amount display device was in the zero or start position (column 4, lines 36-38), and the translation relationship between the gear and the verification code display device; the verification code display device is a rotating body (column 3, lines 22-37); the verification code display device is a rotating display (34); the verification code display device is a disk display (30); the verification code display device displays a verification code (42) for the cumulative meter reading; the

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verification code display device is fixed or set in the zero position of the supply meter display device, in order to generate a portion of the device number; the verification code display device displays, encoded, the cumulative meter reading and device specific data of the supply meter; the device specific data there is displayed the device number and/or device type (60); verification code display device displays the verification code in the form of letters, characters, numbers, or symbols (32).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23-24 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Rilling in view of USPN 1,607,512 to Churcher.

Rilling discloses the device as described above in paragraph 2 including a cover (24) provided over the display surface of the verification code display device.

Rilling does not disclose the cover being operable by means of a mechanical push button that is cushioned.

Churcher discloses a cover being operable by means of a mechanical push button (4) that is cushioned. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the means to operate the cover (26), as taught by

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Rilling, with the mechanical push button, as taught by Churcher, in order for access to the display device to be simpler and easier to operate because of less parts.

***Response to Arguments***

5. Applicant's arguments filed April 29, 2003 have been fully considered but they are not persuasive.

6. In response to applicant's argument that the Rilling reference achieves the same task but in a different manner, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Rilling clearly points out the same structural elements and features that the Applicant is claiming. See description above.

7. In response that Rilling does not have a relationship between the drive means and the verification code display device: Rilling discloses having a gear train including at least one gear associated with each of the dials (column 3, lines 25-26). Therefore, there clearly is a translation relationship between the drive means and the verification code display device, otherwise the verification code display device would not ever move and thus be inoperable.

8. In response to applicant's argument that the Churcher reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the teachings of the push button disclosed by Churcher were added as an alternate means of operating the cover. The practice of the Churcher reference is not drawn on by the examiner, only the teaching of the button.

#### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda J Hoolahan whose telephone number is (703) 308-0139. The examiner can normally be reached on Monday through Friday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

ajh  
June 9, 2003



Diego Gutierrez  
Supervisory Patent Examiner  
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**CHRISTOPHER W. FULTON  
PRIMARY EXAMINER**